

Summary of Changes to Proposed Nationwide Permits - July 16, 1999

	Activity	July 1, 1998	July 21, 1999
NWP 3	Repair, rehabilitation, or replacement	original terms of NWP 3	no change
		all waters of U.S.	no change
		notification for repair and rehabilitation activities	removed this notification requirement
	Removal of accumulated sediments	removal of accumulated sediments and placement of riprap to protect structure	no change
		all waters of U.S.	no change
		limit of 200 feet from structure	no change
		notification required for all activities	no change
	Discharges into waters of the U.S. associated with the restoration of uplands damaged by discrete events	separate subparagraphs for authorized activities	restructured this part of NWP into one paragraph
		all waters of U.S.	no change
		50 cubic yard limit to remove obstructions from waters	no change
		inconsistent notification requirements in proposed modification	notification required for all activities
			General Condition 25 - notification required for discharges into designated critical resource waters
			General Condition 26 - notification required for discharges in impaired waters, but prohibition for losses of greater than 1 acre does not apply
			General Condition 27 - does not apply to this NWP

	Activity	July 1, 1998	July 21, 1999
NWP 7	outfall structures and associated intake structures	original terms of NWP 7	no change
	maintenance dredging or excavation to remove accumulated sediments	maintenance excavation or dredging	no change
		all waters of U.S.	no change
		limited to minimum necessary to restore to original design capacities	no change
		notification required for all activities	no change
			notification must include delineation of special aquatic sites
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - does not apply to this NWP
NWP 12	Utility Activities	modification proposed as "Utility Activities"	changed title of NWP to "Utility Line Activities"
	Utility lines	original terms of NWP 12	no change
		all waters of U.S.	no change
	Utility line substations	construction, maintenance, or expansion of substations associated with utility lines	no change
		non-Section 10 waters	non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
		1 acre limit	no change
		notification required for loss of greater than 1/3 acre	notification required for loss of greater than 1/4 acre

	Activity	July 1, 1998	July 21, 1999
NWP 12 con't	Foundations for overhead utility line towers, poles, and anchors	construction or maintenance of foundations for overhead utility lines	no change
		all waters of U.S.	no change
		must be minimum size necessary	no change
	Access roads	permanent access roads for the construction and maintenance of utility lines	no change
		non-Section 10 waters, excluding non-tidal wetlands contiguous to Section 10 waters	non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
		1 acre limit	no change
		notification required for above-grade fills in waters of U.S. for greater than 500 feet	no change
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - notification required and activity cannot decrease flood-holding capacity
NWP 14	Linear Transportation Crossings	1 or 2 acre limit for public crossings in non-tidal waters, excluding non-tidal wetlands contiguous to tidal waters	1 acre limit for public crossings in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
		1/3 acre and 200 linear foot limits for public crossings in tidal waters and non-tidal wetlands contiguous to tidal waters	1/3 and 200 linear foot limits for public crossings in tidal waters and non-tidal wetlands adjacent to tidal waters
		1/3 acre and 200 linear foot limits for private crossings in all waters of U.S.	no change

	Activity	July 1, 1998	July 21, 1999
NWP 14 con't		notification for losses of greater than 1/3 acre or discharges into special aquatic sites	notification for losses greater than 1/4 acre or discharges into special aquatic sites
		mitigation proposal with PCN for public crossings	mitigation proposal with PCN for all crossings
			require statement explaining how temporary losses will be minimized
		does not authorize non-linear features associated with transportation projects	no change
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - notification required and activity cannot decrease flood-holding capacity
NWP 27	Stream and Wetland Restoration Activities	add restoration and enhancement of non-Section 10 streams and open waters	added restoration and enhancement of non-tidal streams and open waters and restoration of former tidal waters
			added provision allowing reversion of wetlands restored on prior converted cropland that has not been abandoned and did not require 404 permit to do restoration activity
		can relocate aquatic habitats on project site	can only relocate non-tidal waters; tidal waters cannot be relocated or converted
			General Condition 25 - notification required for discharges into designated critical resource waters

	Activity	July 1, 1998	July 21, 1999
NWP 27 con't			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - does not apply to this NWP
NWP 39	Residential, Commercial, and Institutional Developments	designated as NWP A	designated as NWP 39
		proposed as Residential, Commercial, and Institutional Activities	changed title of NWP
			limit to building pads and attendant features
		non-tidal waters, excluding non-tidal wetlands contiguous to tidal waters	non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
		option of simple 3 acre limit or 3-acre indexed acreage limit based on ranges of parcel size	algebraic indexed acreage limit based on project area; 3 acre limit (reached at project size 137.5 acres or greater)
		maximum 3 acre limit	no change
		notification required for discharges resulting in the loss of greater than 1/3 acre	notification required for discharges resulting in the loss of greater than 1/4 acre
		notification required for discharges into open waters	no change
		statement of avoidance/minimization required with notification	no change
		mitigation proposal required with notification	no change
		authorize rechannelization of streams	no stream channelization or relocation downstream of point where average annual flow is greater than 1 cubic foot per second

	Activity	July 1, 1998	July 21, 1999
NWP 39 con't			for activities that don't require notification, permittee must submit report to DE
			added requirement for establishment, to maximum extent practicable, of vegetated buffers adjacent to open waters
		subdivision provision in proposed General Condition 16	moved subdivision provision from General Conditions to this NWP and made the provision similar to the subdivision provision found in NWP 26
			added restrictions for using NWPs 39 and 40 on same property
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - prohibits use of NWP to authorize permanent, above-grade fills in waters in 100-year floodplain
NWP 40	Agricultural Activities		
		non-tidal waters, including non-tidal wetlands	non-tidal waters of U.S., excluding non-tidal wetlands adjacent to tidal waters
		single and complete project based on farm (IRS definition)	single and complete project based on farm tracts determined by Farm Service Agency
	discharges into non-tidal wetlands to increase production	NRCS determines if activity qualifies for minimal effects exemption; maximum of 1 acre non-tidal wetlands and maximum of 1/3 of acre of playas, prairie potholes, and vernal pools	for USDA program participants, obtain exemption or minimal effects determination with mitigation from NRCS; maximum of 2 acres non-tidal wetlands; indexed acreage limit for playas, prairie potholes, and vernal pools for maximum of 1 acre; NRCS takes lead, but permittee must submit report to DE
	Activity	July 1, 1998	July 21, 1999

NWP 40 con't			for non-participants in USDA programs, DE determines if proposed activity results in minimal adverse effects on aquatic environment; maximum of 2 acres of non-tidal wetlands; indexed acreage limit for playas, prairie potholes, and vernal pools for maximum of 1 acre; notification to DE required for loss of greater than 1/4 acre of non-tidal wetlands
		3 acres maximum per farm every 5 years	2 acre maximum per farm tract (not every 5 years)
	construction of farm buildings	limit of 1 acre of farmed wetlands, excluding playas, prairie potholes, and vernal pools	limit of 1 acre of farmed wetlands
	relocation of drainage ditches	relocation of existing serviceable drainage ditches and previously manipulated intermittent and small perennial streams	relocation of existing serviceable drainage ditches constructed in non-tidal streams
		notification for relocation of greater than 500 linear feet of drainage ditches and previously manipulated intermittent and small perennial streams	notification for relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - prohibits use of NWP to authorize permanent, above-grade fills in waters in 100-year floodplain
NWP 41	Reshaping Existing Drainage Ditches	designated as NWP F	designated as NWP 41
		non-Section 10 waters of the U.S.	non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters

	Activity	July 1, 1998	July 21, 1999
NWP 41 con't		no acreage limit	no change
		notification required for sidecasting into waters of U.S.	no change
			notification required for reshaping greater than 500 linear feet of drainage ditch
		does not authorize relocation of drainage ditches	no change
			General Condition 25 - does not apply to this NWP
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - does not apply to this NWP
NWP 42	Recreational Facilities	designated as NWP D	designated as NWP 42
		entitled "Passive Recreational Facilities"	changed title to "Recreational Facilities"
		non-tidal waters of the U.S., excluding non-tidal wetlands contiguous to tidal waters	non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
		1 acre limit	no change
		notification required for loss of greater than 1/3 acre of non-tidal waters or greater than 500 linear feet of stream bed	notification required for loss of 1/4 acre of non-tidal waters or greater than 500 linear feet of stream bed
		definition of recreational facilities authorized by this NWP	no change
		authorizes support facilities	authorizes <u>small</u> support facilities
			General Condition 25 - prohibits use in designated critical resource waters

	Activity	July 1, 1998	July 21, 1999
NWP 42 con't			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - prohibits use of NWP to authorize permanent, above-grade fills in waters in 100-year floodplain
NWP 43	Stormwater Management Facilities	designated as NWP C	designated as NWP 43
		non-Section 10 waters	non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters
		does not authorize discharges into perennial streams for construction of new SWM facilities	no change
		2 acre limit for construction of new SWM facilities	no change
		no acreage limit for maintenance of existing SWM facilities	no change
		notification required for the loss of greater than 1/3 acre for construction of new SWM facilities	notification required for the loss of greater than 1/4 acre for construction of new SWM facilities
		notification required for the loss of greater than 1 acre for maintenance of existing SWM facilities	notification required for the loss of greater than 1/4 acre for maintenance of existing SWM facilities
		notification required for the loss of greater than 500 linear feet of intermittent stream bed	no change
			require statement of avoidance and minimization with notification
		mitigation proposal required with notification for new SWM facilities	no change
			General Condition 25 - prohibits use in designated critical resource waters

	Activity	July 1, 1998	
NWP 43 con't			discharges resulting in loss of greater than 1 acre of impaired smaller losses
			General Condition 27 - prohibits use of NWP to authorize permanent, above-grade fills in waters in 100-year floodplain
NWP 44	Mining Activities	designated as NWP E	designated as NWP 44
		non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters	reduced scope of applicable waters as outlined below
	Aggregate mining (sand and gravel)	Applicable waters: <ul style="list-style-type: none"> • lower perennial riverine systems • intermittent and ephemeral streams • isolated wetlands • wetlands above ordinary high water mark • dry washes and arroyos 	Applicable waters: <ul style="list-style-type: none"> • lower perennial streams, excluding adjacent wetlands • isolated waters • streams with average annual flow of less than 1 cubic foot per second • non-tidal wetlands adjacent to headwater streams
	Aggregate mining (crushed and broken stone)	Applicable waters: <ul style="list-style-type: none"> • intermittent and small perennial stream relocations • isolated wetlands • wetlands above ordinary high water mark • dry washes and arroyos 	Applicable waters: <ul style="list-style-type: none"> • isolated waters • streams with average annual flow of less than 1 cubic foot per second • non-tidal wetlands adjacent to headwater streams
	Hard rock/mineral mining	Applicable waters: <ul style="list-style-type: none"> • intermittent and small perennial stream relocations • isolated wetlands • wetlands above ordinary high water mark • dry washes and arroyos 	Applicable waters <ul style="list-style-type: none"> • isolated waters • non-tidal wetlands adjacent to headwater streams (no hard rock mineral mining in streams)
		acreage limits based on activity and applicable waters	one acreage limit based on single and complete mining project
		option for 3 or 2 acre limit, including 1 acre for support activities	2 acre limit, including 1 acre for support activities

		July 1, 1998	July 21, 1999
con't		notification for all activities	
			notification must include statement of avoidance and minimization
		requirements to avoid adverse effects to aquatic environment	no change
			no aggregate mining in waters of U.S. within 100 feet of headwater streams with average annual flows greater than 1 cubic foot per second
			no hard rock/mineral mining in waters of U.S. within 100 feet of ordinary high water mark of headwater streams
			General Condition 25 - prohibits use in designated critical resource waters
			General Condition 26 - prohibits discharges resulting in loss of greater than 1 acre of impaired waters; notification required for smaller losses
			General Condition 27 - prohibits use of NWP to authorize permanent, above-grade fills in waters in 100-year floodplain

	General Condition Title		July 21, 1999
		combine general conditions with	no change
General Condition 4	Aquatic Life Movements		add requirement that culverts placed in streams must allow maintenance of low flows
General Condition 9	Water Quality	add requirement for water quality management plan for NWP's 12, 14, 17, 18, 21, 32, 39, 40, 42, 43, and 44	no change except to remove NWP 21 from list since mining laws already require this plan
		add vegetated buffer requirement	no change
General Condition 11	Endangered Species		add requirement that notification include name(s) of Federally-listed threatened or endangered species that may be affected or use designated critical habitat
General Condition 13	Notification	DE has 30 days to determine if PCN is complete	no change
		DE can make multiple requests for additional information	DE can make only one request for additional information to make PCN complete; review does not begin until all requested information received
		Upon receipt of complete PCN, DE has 30 days to make decision if proposed activity qualifies for NWP authorization	Upon receipt of complete PCN, DE has 45 days to determine if proposed activity qualifies for NWP authorization
		agency coordination for NWP's 39, 40, 43, and 44 where proposed activity results in the loss of greater than 1 acre of waters of the U.S. and for NWP's 14, 21, 29, 33, 37, and 38	agency coordination for PCNs to DE for activities that result in the loss of greater than 1 acre of waters of the U.S.
		agency has 5 calendar days to determine if it will submit comments; DE waits additional 10 calendar days	agency has 10 calendar days to determine if it will submit comments; DE waits additional 15 calendar days
General Condition 15	Use of Multiple Nationwide Permits	previously entitled "Multiple Use of Nationwide Permits"	changed title to better describe this practice

	Title	July 1, 1998	
General Condition		notification required if any NWP 12 - 40 and NWP A - F is combined with - F	cannot use more than one NWP complete project except when the acreage loss of waters of the U.S. of the NWP with the highest specified acreage limit
Condition 17		no activities in areas of concentrated shellfish production (except NWP 4	changed "production" to "populations"
Condition 19		DE can require restoration, creation, enhancement, or preservation of establishment and maintenance of vegetated buffers, to offset losses of	no change
			recommended width of buffers native species
General 21	Management of Water	Activity must be designed to maintain preconstruction flow conditions to	no change
General 25	Designated Critical	not proposed in July 1, 1998, notice (proposed in October 14, 1998, notice	defined as NOAA-designated marine sanctuaries, National National Wild and Scenic Rivers, coral reefs, critical habitat for species, State natural heritage sites, and outstanding natural State
			prohibits use of certain NWPs in waters and adjacent wetlands and requires notification for
			for activity that may affect endangered or threatened must concur that the activity complies with General Condition

	General Condition Title	July 1, 1998	July 21, 1999
General Condition 26	Impaired waters	not proposed in July 1, 1998, notice (proposed in October 14, 1998, notice - restrict use of NWPs in waterbodies impaired due to loss of wetlands)	applies to waters impaired due to nutrients, low dissolved oxygen due to organic enrichment, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or loss of wetlands; includes wetlands adjacent to those waters
			prohibits use of NWPs to authorize discharges resulting in the loss of greater than 1 acre of impaired waters and adjacent wetlands; prohibition does not apply to activities authorized by NWP 3 (PCN required)
			prohibits use of NWPs to authorize discharges resulting the loss of 1 acre or less of impaired waters and adjacent wetlands, unless permittee demonstrates to DE that activity will not cause further impairment of waterbody
General Condition 27	Fills within the 100-year Floodplain	not proposed in July 1, 1998, notice (proposed in October 14, 1998, notice - restrict use of NWPs in FEMA-mapped 100-year floodplains)	Prohibits use of NWPs 21, 29, 39, 40, 42, 43, and 44 to authorize permanent, above-grade fills in waters of U.S. within 100-year floodplain
			For NWPs 21, 29, 39, 40, 42, 43, and 44, permittee must notify DE for any work in the 100-year floodplain
			For NWPs 12 and 14, permittee must notify DE and demonstrate that work will not decrease the flood-holding capacity and cause no more than minimal changes to hydrology, flow regime, or volume of waters associated with the 100-year floodplain

	Title	July 1, 1998	
General Condition			100-year floodplain identified by up-to-date FEMA maps or local licensed professional engineer
			this condition does not apply to less than 1 square mile